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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/051,757	01/16/2002	Eric A. Durant	899.056US1	5533
21186	7590	01/13/2006	EXAMINER	
SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH			PENDLETON, BRIAN T	
1600 TCF TOWER				
121 SOUTH EIGHT STREET			ART UNIT	PAPER NUMBER
MINNEAPOLIS, MN 55402			2644	

DATE MAILED: 01/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/051,757	DURANT, ERIC A.	
	Examiner Brian T. Pendleton	Art Unit 2644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 31 October 2005.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-35 is/are pending in the application.
 4a) Of the above claim(s) 36-43 is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-35 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 16 January 2002 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 3, 11, and 17 are rejected under 35 U.S.C. 102(e) as being anticipated by Hagen et al, US Patent 6,888,948. In figure 6, Hagen et al teach a portable system programming hearing aids comprising memory 272 having hearing aid programming software (a plurality of parent sets), toggle device 236, a select indicator 244, and communications link (282, 288) for interfacing with a hearing aid. Claims 1, 11, and 17 are met. Regarding claim 3, figure 10 illustrates an alternative embodiment comprising a wireless link between toggle device 320 and programmer 300 which is eventually interfaced with a hearing aid.

Claims 1-3, 11, and 17-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Weinfurtner et al, US Patent 6,035,050. Weinfurtner et al disclose a programmable hearing aid system comprising hearing aid 10, an external control module 40, toggle device (buttons 48) for selecting a hearing situation (wherein each hearing situation has a plurality of parameters) and wireless data transmission path 24. Claims 1, 3, 11, 17, and 19 are met. As to claim 2, there is disclosed a parameter set (more than one parameter). Regarding claim 18, Weinfurtner discloses

a method for determining a parameter optimization phase which has an initial prescription (parameter setting using buttons 48) and reset mechanism (buttons 50).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4-16 and 20-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weinfurtner et al in view of Watanabe et al, US Patent 6,004,015. Weinfurtner et al disclose a programmable hearing aid system and method for determining optimum parameter sets. Weinfurtner et al teach a training phase whereby the user selects a trial parameter for a particular hearing situation. Weinfurtner does not disclose a genetic algorithm operator for performing mutation or crossover on the parent sets and producing a child set in an effort to converge to a single solution set. Watanabe et al teach an optimization adjusting method for converging on a single solution for application of hearing aid fitting (see column 3). The method comprises crossover operators and genetic algorithms (figures 67 and 69). It would have been obvious to one of ordinary skill in the art at the time of invention to modify Weinfurtner et al by utilizing the optimal solution technique expressed by Watanabe et al for the purpose of improving the hearing aid fit for a user.

Conclusion

Art Unit: 2644

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian T. Pendleton whose telephone number is (571) 272-7527. The examiner can normally be reached on M-F 7-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vivian Chin can be reached on (571) 272-7848. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


BRIAN TYRONE PENDLETON
PRIMARY EXAMINER

btp